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## RECENT EXPERIENCE WITH THE INITIATIVE, REFERENDUM AND RECALL

CHARLES FREMONT TAYLOR

Editor of *Equity*, Philadelphia

WHEN we realize that the constitution of every state in the Union, except Delaware, has been adopted by referendum to the voters of the respective states, we see that the referendum is no new thing. When we realize that every amendment to every state constitution, except that of Delaware, has been adopted by referendum to the voters of the respective states, and that at every general election new amendments are submitted either by action of the legislature or by means of the voters' initiative in one or more states, we see that the referendum is a "going concern." As an illustration, amendments more or less numerous were referred to the voters at the recent election, November 3, in the following states, the number in parenthesis following the name of each state denoting the number of amendments submitted: Arizona (5), California (30), Colorado (8), Georgia (10), Kansas (2), Louisiana (17), Michigan (4), Mississippi (9), Missouri (11), Nebraska (4), North Dakota (6), Ohio (4), Oklahoma (4), Oregon (20), South Carolina (11), South Dakota (8), Texas (3), Washington (1), Wisconsin (9), Wyoming (4), and Arkansas—September election—(3).

However, by no means all of these submissions were in the so-called initiative and referendum states. Of the states mentioned above, the voters' constitutional initiative does not exist in the following: Georgia, Kansas, Louisiana, Mississippi, North Dakota, South Carolina, Texas, Washington, Wisconsin, and Wyoming.

Hence the amendments in these states were submitted necessarily in the old-fashioned way; that is, by the legislatures.

*Amendments by Both Processes*

The remainder of the first-mentioned states have the voters' constitutional initiative, by which the voters can, by petition, initiate constitutional amendments. But the legislatures also continue to submit amendments in these states. We give here the number of amendments submitted by each process in these states for this year's election:

	By initiative	By legislature
Arizona . . . . .	5	
Arkansas . . . . .	1	2
California . . . . .	8	22
Colorado . . . . .	5	3
Michigan . . . . .	1	3
Missouri . . . . .	3	8
Nebraska . . . . .	1	3
Ohio . . . . .	4	
Oklahoma . . . . .	4	
Oregon . . . . .	11	9
S. Dakota . . . . .		8
Total . . . . .	43	58
To the total here given by legislature, we must add the 72		
amendments submitted by the legislatures in those states		
which have no other process . . . . .		72
		130

This gives succinctly the recent referenda of state constitutional amendments, which may be summarized as follows. By simply adding we find the following totals: 130 amendments were submitted by the old process of legislative submission, and 43 were submitted by the voters' initiative, that is, by petitions. It is evident that the old process of submitting amendments is still active, even in the states where the voters have the privilege of initiating constitutional amendments. Thus we see also that the voters' constitutional initiative has not been abused, as was feared by some anxious statesmen and educators lacking confidence in the people. If abuse is here indicated, it is by the legislatures and not the voters. In an article contributed by Governor Glynn to the *New York Times* for October 25, 1914, the statement is made that in New York state since 1895 over 600 proposed amendments to the consti-

tution have been introduced into the legislature. No such activity by means of the voters' constitutional initiative has ever been known.

The official returns on constitutional amendments from the secretary of state of South Carolina arrived just as this article was needed for the press. The surprising data that he presents illustrate the imperfections of many of our state constitutions. The total vote for governor was 34,606 for Manning, Democrat, and 83 for Britton, Socialist. Seemingly there were no other candidates for governor.

Eleven constitutional amendments were submitted.<sup>1</sup> Though

<sup>1</sup> The following were the amendments and the vote thereon:

Amendment to Article X, State Constitution, empowering the cities of Sumter and Darlington and the towns of Belton and Walhalla to assess abutting property for permanent improvements. Total vote, 2,754; for, 2,089; against, 665.

A Joint Resolution to amend Section 8, Article II, of the Constitution, by adding thereto, on line three, after the word "College" and before the word "the" the following: "South Carolina School for the Deaf and Blind, located at Cedar Springs." Total vote, 13,924; for, 10,730; against, 3,194.

A Joint Resolution to amend Section 7, Article VIII, of the Constitution, relating to Municipal Bonded Indebtedness, by adding a proviso thereto, relating to the School District of Yorkville. Total vote, 10,607; for, 5,324; against, 4,283.

A Joint Resolution proposing an amendment to Article X of the Constitution, by adding thereto Section 16, to empower the Cities of Florence and Orangeburg and the Town of Landrum to assess abutting property for permanent improvements. Total vote, 10,267; for, 5,971; against, 4,296.

A Joint Resolution to amend Section 20, Article III, of the Constitution, by adding thereto the following: "Except where there is only one candidate nominated for the place to be filled at such election, in which case the election shall be *viva voce* without any roll call." Total vote, 9,478; for, 5,348; against, 4,130.

A Joint Resolution to amend Section 7, Article VIII, of the Constitution, relating to Municipal Bonded Indebtedness, by adding a proviso thereto as to the City of Florence. Total vote, 9,018; for, 5,455; against, 3,563.

A Joint Resolution to amend Section 7, Article VIII, of the Constitution of this State by adding a proviso thereto so as to empower the Cities of Chester and Sumter each to issue bonds to an amount not exceeding fifteen per cent of the assessed value of the taxable property therein for the improvement of streets and sidewalks. Total vote, 8,998; for, 5,273; against, 3,725.

A Joint Resolution proposing an amendment to Article X of the Constitution, by adding thereto a section to be designated as Section 15a, to empower the Towns of Latta and Dillon to assess abutting property for permanent improvements. Total vote, 9,485; for, 5,606; against, 3,879.

A Joint Resolution to amend Section 1, Article XII, of the Constitution, by

most of them dealt with matters of small consequence, and many were of only local application, yet the constitution of the state itself made it necessary to submit them to the voters of the entire state and to embody them in the constitution. It is obvious to any student of government that these are purely legislative matters, and most of them should be settled by local legislatures. The voters of South Carolina cannot order a measure of any kind to be put on the ballot, but the legislature must put these trivial matters on the ballot.

But South Carolina is not alone in palpable constitutional imperfections. The following were some of the measures acted upon by the Massachusetts state legislature in the session of 1913:

That Boston may appropriate for Museum of Fine Arts.

That Boston may appropriate for Boston Opera House.

On expenses of Cambridge Department Public Safety.

For reorganization of Boston School Committee.

That Boston police have a day off in eight.

On playgrounds of Worcester.

On automatic sprinklers in Boston.

On salaries of Boston Licensing Board.

For police commissioners and license board in Chelsea.

For inclosed athletic field in Chelsea.

That Malden and Medford may make contracts as to sewage disposal.

That Dennis O'Keefe be restored to Boston Fire Department.

That Brockton may pay annual salary to members of city council.

That Boston may pay annuity to widow of J. J. Lehan.

For controller of accounts in Newton.

striking out the words "Blind, Deaf and Dumb" after the word "Insane" on line two, and before the word "And" on line two. Total vote, 11,617; for, 8,217; against, 3,400.

A Joint Resolution proposing an Amendment to Article X of the Constitution, by adding thereto Section 17, to empower the Town of Fort Mill to assess abutting property for permanent improvements. Total vote, 9,041; for, 5,289; against, 3,752.

A Joint Resolution proposing an amendment to Article X of the Constitution, by adding thereto Section 16, to empower the Cities of Anderson, Greenwood and Towns of Bennettsville, Timmons ville and Honea Path to assess abutting property for permanent improvements. Total vote, 9,386; for, 5,373; against, 4,013.

For day off in seven for Boston police.

For a boys' camp in Franklin Park, Boston.

On approval of certain Quincy streets by mayor and council.

That Lynn may give cemetery lot to Relief Association of Fire Department.

To abolish Fall River Board of Police, *etc.*, and election of board.

That Pittsfield may grade streets, *etc.*

That Quincy may change method of sewer assessment.

That Worcester may set aside sites for waiting stations.

For one day off in eight for police in Chelsea, Revere and Winthrop.

That Salem Police Relief Association members may continue members when not police.

That Boston may pay sum to Patrick E. Kearns.

To put Warren H. Brown on Boston pension list of firemen.

That Worcester may take land to widen Madison Street.

For widening Bridge Street, Salem, *etc.*

That Lynn may pay sum to James S. Kennedy.

That Holyoke may pay sums to widows of P. J. Riley and James Lynch.

That police matrons in cities and towns may be pensioned.

To encourage shipping and manufacturing in Cambridge.

This shows the need of a home-rule provision in the Massachusetts constitution by which all such matters may be determined by the respective localities affected. Then the Massachusetts legislature could have shorter sessions, and biennial instead of annual ones.

### *Statutes Initiated and Referred*

In some states statutes may be initiated by voters' petition; and usually these same states possess the voters' statutory referendum. That is, a reasonable number of voters may, by petition, initiate a law, or suspend the operation of any law passed by the legislature until said law is ratified by direct vote. In either case the direct vote on the initiated or referred statute is taken "at the next general election;" and if it receives an affirmative majority of the votes cast thereon, it is confirmed and becomes law; but if a majority of votes cast thereon are negative, the initiated law is defeated, or the pro-

posed law which passed the legislature is vetoed. This last is sometimes called the voters' veto.

Legislatures have, of recent years, formed something of a habit of submitting proposed statutes to a referendum. Proposed statutes, either by the voters' initiative or by the voters' referendum or by the legislative referendum, were voted upon in the following states on November 3, the number and the process of submission being given :

	Voters' initiative	Voters' referendum	Legislative referendum
Arizona . . . . .	9	4	
Arkansas . . . . .	2		
California . . . . .	9	4	5
Colorado . . . . .	3	5	
Massachusetts . . . . .			3
Missouri . . . . .		4	
Nebraska . . . . .	1	2	1
N. Dakota . . . . .			1
Oregon . . . . .	8		1
S. Dakota . . . . .	3		1
Washington . . . . .	7		2
Total . . . . .	42	19	14

To sum up the statutes, we have: Total, 75; statutes submitted by the voters' initiative, 42; statutes submitted by voters' referendum, 19; statutes submitted by legislatures, 14. This, in a general election all over the country, does not show feverish activity in the line of direct action. There is certainly no abuse here of the recently obtained powers by which voters can demand direct action. This moderation is emphasized by the facts in the next paragraph.

All the way from 500 to 3,000 laws, resolutions, *etc.*, are passed in every state during the average legislative session; and a great many more are introduced and considered but fail of passage. So we see that the measures placed before the voters by means of the popular initiative and referendum are comparatively very few indeed. It is fitting that this should be so, for the initiative and referendum are not intended to supplant representative government, but only to restrain it when it is wrong and to supplement it when it is deficient.

Though the number of measures thus submitted be small, they may be important. Certainly the psychological influence upon legislators of the possibility of the initiative or referendum is important; restraining them from doing what the electorate does not want, and stimulating them to pass laws that the electorate does want.

The returns of the election on November 3 on referred measures are as yet very meager. The various secretaries of state say that the official count will not be complete until about the close of this calendar year.

### *State-Wide Recall*

At least seven states now have the state-wide recall: Arizona, Arkansas, California, Colorado, Michigan, Nevada and Oregon. (Louisiana was added to this list on November 3, 1914.) The state-wide recall has never been called into use.

### *Local Use of the Initiative, Referendum and Recall*

Now let us turn to the local use of the initiative, referendum and recall. In this country there are over 350 municipalities that have the commission form of government. Nearly all of these have the initiative, referendum and recall, and some municipalities not under the commission form of government have these powers. A majority (at least 200) have all three of these powers, while some have the initiative and referendum without the recall. A nation-wide investigation of all these municipalities for all the time that they have possessed these powers discovered that only 31 had used the initiative, 26 the referendum and 33 the recall. It will be seen that the recall has been used for local purposes as freely as the other powers, but not for state purposes; while the other powers have been used rather freely for state purposes. Further, concerning the local recall, 25 attempts have been made, but failed on account of the promoters not being able to get a sufficient number of signatures. This indicates that the securing of recall signatures is not so easy as some theorists seem to believe. Of the 33 recall elections actually held, 20 resulted



in recall and 13 resulted in reelection of the official sought to be recalled.<sup>1</sup>

The above results show a striking conservatism on the part of voters. They do not abuse these enlarged powers, but use them to good purpose when there is occasion. The corruption that a few years ago made municipal government in America notorious the world over would have been impossible if the voters of all municipalities had possessed the initiative, referendum and recall.

The above facts demonstrate that the voters, in both state and municipal matters, are very moderate and conservative in their use of these new powers which they have reserved to themselves only in comparatively recent years. They show that there is no basis in fact for ex-President Taft's statement: "I want to show the young men of this country the absurdity of having weary armies of voters tramping frequently to the polls—at the call of would-be reformers—in a struggle for incessant changes in the laws." No state or municipality in the writer's knowledge having once obtained these powers has ever given them up. Occasional use of these powers has had a salutary influence on public officers, and their use has quickened the interest of voters in public affairs. The movement to place these powers in municipal charters and in state constitutions goes steadily on; and it will not, must not, stop until these fundamental powers of the people are placed in the charter of every municipality and in the constitution of every state.

The large number of constitutional amendments submitted to the voters this year, and every year, mostly by legislatures, indicates a dissatisfaction with our present state constitutions. A great evil is the proposal of much purely statutory matter for incorporation into constitutions, evidently in order to give it greater permanency than statutes. Some means should be found to confine state constitutions to the "frame of govern-

<sup>1</sup> For full details, see *Municipal Initiative, Referendum and Recall in Practice*, by the present writer, in the *National Municipal Review* for October 1914.

ment." Then the voters would seldom be called upon to vote on constitutional amendments. The facts given in the first part of this article show this to be a greater cause of the "electoral fatigue" complained of by ex-Mayor Matthews, of Boston, than the initiative, referendum and recall.

A state constitution limited to the "frame of government" could and should be brief and comprehensive. A unicameral legislative body of few members, carefully chosen, with long terms, ample salary, in constant service, kept conscious of their duties with the possibility of recall, could from time to time promulgate laws so maturely considered and fitted to the requirements of the people that need would seldom if ever be felt for the statutory initiative or referendum. The writer ventures to hope that the coming New York constitutional convention will prepare and submit such a constitution.

At the recent meeting of the national bar association the startling statement was made that our Congress and state legislatures had passed 62,014 statutes during the five years from 1909 to 1913 inclusive. The crying need is for fewer and better laws. A state government might well consist of a board of governors not more numerous than the members of Congress from the state; it should be chosen in a manner to secure full and true representation of every considerable class of voters (proportional representation); this board of governors, being in constant service and possessing all the powers of government, would appoint only properly qualified men for administrative offices; it would promulgate laws only as they were needed, and these laws would be so carefully considered that they need not be numerous. With such perfect and efficient representation there would seldom if ever be occasion to use the initiative, referendum or recall.

(97)

#### ADDENDUM

In addition to the constitutional amendments submitted by legislatures for the election of November 3, 1914, reported above, the North Carolina legislature submitted ten amendments, and the legislature of Minnesota submitted eleven amendments. Some amendments were submitted by the legislature of Nevada, but we have not been able to ascertain the exact number yet. These additional facts emphasize the showing that it is the legislatures and not the initiative and referendum that induce whatever "electoral fatigue" the voters suffer from, which is complained of by ex-President Taft. The figures in this note will change the total of amendments submitted by legislatures given in the body of the above article.